

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA, *ex rel.*  
DAVID M. KESTER, et al.,

Plaintiffs,

v.

NOVARTIS PHARMACEUTICAL  
CORPORATION, et al.,

Defendants.

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Civil Action No.

1:11-cv-08196 (CM)

**ECF CASE**

**PLAINTIFFS' PROPOSED SPECIAL VERDICT FORM**

## **JURY VERDICT FORM**

Based on the instructions that have been given to you, please answer the following questions:

### **SECTION 1 – EXJADE QUESTIONS:**

#### **Anti-Kickback Statute Violation**

1. By a preponderance of the evidence, did defendant Novartis knowingly and willfully offer or provide patient referrals and/or rebates to a pharmacy to induce the pharmacy to recommend Exjade refills to patients?

☐ Yes

☐ No

If Yes, which specialty pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

2. If you answered yes to Question 1 as to one or more pharmacies, by a preponderance of the evidence, did those pharmacies knowingly and willfully accept patient referrals and/or rebates in exchange for recommending Exjade refills to patients?

☐ Yes

☐ No

**Federal False Claims Act Violations (Exjade)**

If you answered yes to Question 1 or Question 2, then please answer the following three questions about the federal False Claims Act:

3. Did Novartis knowingly or recklessly cause false or fraudulent claims for payment to be presented to Medicare or Medicaid by any of the Exjade pharmacies?

☐ Yes

☐ No

If Yes, which pharmacies (check all that apply) did the false or fraudulent claims relate to:

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

4. Did Novartis either knowingly or recklessly make or use false statements, or cause any of the three Exjade pharmacies to make or use false statements, material to claims for reimbursement for Exjade paid by Medicare or Medicaid?

☐ Yes

☐ No

If Yes, which pharmacies (check all that apply) did the false statements relate to:

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

5. Did Novartis conspire with any of the Exjade pharmacies to violate the federal False Claims Act?

☐ Yes

☐ No

If Yes, with which pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**State False Claims Act Violations (Exjade)**

If you answered yes to Question 1 or Question 2, then please answer the following three questions (Questions 6, 7, and 8) about the False Claims Acts of the states of California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois; Indiana; Louisiana; Maryland; Massachusetts; Michigan; Minnesota; Montana; Nevada; New Jersey; New Mexico; New York, North Carolina; Oklahoma; Rhode Island; Tennessee; Virginia; and Wisconsin:

6. Did Novartis knowingly or recklessly cause false or fraudulent claims for payment to be presented to the states' Medicaid programs by any of the Exjade pharmacies in connection with a violation of the federal AKS?

☐ Yes

☐ No

If Yes, which pharmacies (check all that apply) did the false or fraudulent claims relate to:

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

7. Did Novartis either knowingly or recklessly make or use false statements, or cause any of the three Exjade pharmacies to make or use false statements, material to claims for reimbursement for Exjade paid by the states' Medicaid programs in connection with a violation of the federal AKS?

☐ Yes

☐ No

If Yes, which pharmacies (check all that apply) did the false statements relate to:

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

8. Did Novartis conspire with any of the Exjade pharmacies to violate the states' False Claims Acts in connection with a violation of the federal AKS?

☐ Yes

☐ No

If Yes, with which pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]



9. Did Novartis knowingly or recklessly violate the following states' False Claims Acts by violating a provision of State law, a State regulation, or a State policy upon which payment by the state's Medicaid program was conditioned?

**California (Question 9)**

☐ Yes

☐ No

If Yes, with which specialty pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**Georgia (Question 9)**

☐ Yes

☐ No

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**Illinois (Question 9)**

☐ Yes

☐ No

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**Indiana (Question 9)**

☐ Yes

☐ No

If Yes, with which specialty pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**Michigan (Question 9)**

☐ Yes

☐ No

If Yes, with which specialty pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**New Jersey (Question 9)**

☐ Yes

☐ No

If Yes, with which specialty pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**New York (Question 9)**

☐ Yes

☐ No

If Yes, with which specialty pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**Oklahoma (Question 9)**

☐ Yes

☐ No

If Yes, with which specialty pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**Wisconsin (Question 9)**

☐ Yes

☐ No

If Yes, with which specialty pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**Texas False Claims Act Violations (Exjade)**

If you answered yes to Question 1 or Question 2, then please answer the following question about the False Claims Act of the state of Texas:

10. Did Novartis knowingly or recklessly violate the Texas False Claims Act in connection with its relationship with any of the Exjade specialty pharmacies?

☐ Yes

☐ No

If Yes, which specialty pharmacies (check all that apply):

☐ Accredo

☐ BioScrip

☐ US Bioservices

If yes, for each of these pharmacies, during what time period?

Accredo: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

BioScrip: ☐ [February 15, 2007 to March 31, 2012] \_\_\_\_\_ [Other]

US Bioservices: ☐ [April 1, 2008 to March 31, 2012] \_\_\_\_\_ [Other]

**SECTION 3 – MYFORTIC QUESTIONS:**

**Anti-Kickback Statute Violation**

11. By a preponderance of the evidence, did Novartis knowingly and willfully offer or provide rebates to a specialty pharmacy to induce the pharmacy to recommend Myfortic?

☐ Yes

☐ No

If Yes, which pharmacies (check all that apply):

☐ Kilgore's

☐ Bryant's

☐ Baylor

☐ Twenty-Ten

☐ Transcript

If yes, for each of these pharmacies, during what time period ?

Kilgore's: ☐ [June 22, 2004 – November 22, 2013] \_\_\_\_\_ [Other]

Bryant's: ☐ [November 1, 2004 – December 30, 2013] \_\_\_\_\_ [Other]

Baylor: ☐ [October 1, 2009 – September 30, 2010] \_\_\_\_\_ [Other]

Twenty-Ten: ☐ [April 1, 2010 – March 31, 2012] \_\_\_\_\_ [Other]

Transcript: ☐ [July 15, 2011 – June 30, 2013] \_\_\_\_\_ [Other]

12. If you answered yes to Question 11 as to one or more pharmacies, by a preponderance of the evidence, did those pharmacies knowingly and willfully accept rebates in exchange for recommending Myfortic to physicians or patients?

☐ Yes

☐ No

**Federal False Claims Act Violations (Myfortic)**

If you answered yes to Question 11 or Question 12, then please answer the following three questions:

13. Did Novartis knowingly or recklessly cause false or fraudulent claims for payment to be presented to Medicare or Medicaid by any of the Myfortic pharmacies?

☐ Yes

☐ No

If Yes, which pharmacies (check all that apply):

☐ Kilgore's

☐ Bryant's

☐ Baylor

☐ Twenty-Ten

☐ Transcript

If yes, for each of these pharmacies, during what time period?

Kilgore's: ☐ [June 22, 2004 – November 22, 2013] \_\_\_\_\_ [Other]

Bryant's: ☐ [November 1, 2004 – December 30, 2013] \_\_\_\_\_ [Other]

Baylor: ☐ [October 1, 2009 – September 30, 2010] \_\_\_\_\_ [Other]

Twenty-Ten: ☐ [April 1, 2010 – March 31, 2012] \_\_\_\_\_ [Other]

Transcript: ☐ [July 15, 2011 – June 30, 2013] \_\_\_\_\_ [Other]



14. Did Novartis either knowingly or recklessly make or use false statements, or cause any of the Myfortic pharmacies to make or use false statements, material to Medicare or Medicaid claims for reimbursement for Myfortic?

☐ Yes

☐ No

If yes, which pharmacies (check all that apply) did the false statements relate to:

☐ Kilgore's

☐ Bryant's

☐ Baylor

☐ Twenty-Ten

☐ Transcript

If yes, for each of these pharmacies, during what time period ?

Kilgore's: ☐ [June 22, 2004 – November 22, 2013] \_\_\_\_\_ [Other]

Bryant's: ☐ [November 1, 2004 – December 30, 2013] \_\_\_\_\_ [Other]

Baylor: ☐ [October 1, 2009 – September 30, 2010] \_\_\_\_\_ [Other]

Twenty-Ten: ☐ [April 1, 2010 – March 31, 2012] \_\_\_\_\_ [Other]

Transcript: ☐ [July 15, 2011 – June 30, 2013] \_\_\_\_\_ [Other]

15. Did Novartis conspire with any of the Myfortic pharmacies to violate the federal False Claims Act?

☐ Yes

☐ No

If Yes, with which pharmacies (check all that apply):

☐ Kilgore's

☐ Bryant's

☐ Baylor

☐ Twenty-Ten

☐ Transcript

If yes, for each of these pharmacies, during what time period?

Kilgore's: ☐ [June 22, 2004 – November 22, 2013] \_\_\_\_\_ [Other]

Bryant's: ☐ [November 1, 2004 – December 30, 2013] \_\_\_\_\_ [Other]

Baylor: ☐ [October 1, 2009 – September 30, 2010] \_\_\_\_\_ [Other]

Twenty-Ten: ☐ [April 1, 2010 – March 31, 2012] \_\_\_\_\_ [Other]

Transcript: ☐ [July 15, 2011 – June 30, 2013] \_\_\_\_\_ [Other]

**State False Claims Act Violations (Myfortic)**

If you answered yes to Question 11 or Question 12, then please answer the following three questions about the False Claims Act of the state of California:

16. Did Novartis knowingly or recklessly cause false or fraudulent claims for payment to be presented to California's Medicaid program by Twenty-Ten?

☐ Yes

☐ No

If yes, during what time period?

Twenty-Ten: ☐ [April 1, 2010 – March 31, 2012] \_\_\_\_\_ [Other]

17. Did Novartis either knowingly or recklessly make or use false statements, or cause Twenty-Ten to make or use false statements, material to claims for reimbursement submitted to California's Medicaid program for Myfortic?

☐ Yes

☐ No

If yes, during what time period ?

Twenty-Ten: ☐ [April 1, 2010 – March 31, 2012] \_\_\_\_\_ [Other]

18. Did Novartis conspire with Twenty-Ten to violate the California False Claims Act?

☐ Yes

☐ No

If yes, during what time period?

Twenty-Ten: ☐ [April 1, 2010 – March 31, 2012] \_\_\_\_\_ [Other]

**Texas False Claims Act Violations (Myfortic)**

If you answered yes to Question 11 or Question 12, then please answer the following question about the False Claims Act of the state of Texas:

19. Did Novartis knowingly or recklessly violate the Texas False Claims Act in connection with its relationship with Baylor?

☐ Yes

☐ No

If yes, during what time period?

Baylor: ☐ [October 1, 2009 – September 30, 2010] \_\_\_\_\_ [Other]

**SECTION 3 – EXJADE QUESTIONS ABOUT NOVARTIS’ RELATIONSHIP WITH BIOSCRIP:**

**Illinois – Public Assistance Fraud**

20. Did Illinois prove its claim against Novartis under the Illinois Public Assistance Fraud statute in connection with Novartis’ relationship with BioScrip?

☐ Yes

☐ No

If your answer is “yes,” state the amount of damages:

\$ \_\_\_\_\_

If your answer is “yes,” state the number of civil penalties:

\$ \_\_\_\_\_

**Indiana – Crime Victims Relief Act**

21. Did Indiana prove its claim against Novartis under the Crime Victims Relief Act in connection with Novartis’ relationship with BioScrip?

☐ Yes

☐ No

If your answer is “yes,” state the amount of damages:

\$ \_\_\_\_\_

**Maryland – Fraud or Deceit**

22. Did Maryland prove its claim against Novartis for Fraud or Deceit in connection with Novartis' relationship with BioScrip?

☐ Yes

☐ No

If your answer is "yes," state the amount of damages:

\$ \_\_\_\_\_

If your answer is "yes," state the amount of punitive damages:

\$ \_\_\_\_\_

**New York – Social Services Law Section 145-b**

23. Did New York prove its claim against Novartis under Social Services Law Section 145-b in connection with Novartis' relationship with BioScrip?

☐ Yes

☐ No

If your answer is "yes," state the amount of damages:

\$ \_\_\_\_\_

**New York – Executive Law Section 63-c**

24. Did New York prove its claim against Novartis under Executive Law Section 63-c in connection with Novartis' relationship with BioScrip?

☐ Yes

☐ No

If your answer is "yes," state the amount of damages:

\$ \_\_\_\_\_

**Oklahoma – Medicaid Program Integrity Act (Section 1005(A)(1))**

25. Did Oklahoma prove its claim against Novartis under the Medicaid Program Integrity Act in connection with Novartis' relationship with BioScrip?

☐ Yes

☐ No

If your answer is "yes," state the amount of damages:

\$ \_\_\_\_\_

**Oklahoma – Medicaid Program Integrity Act (Section 1005(A)(6))**

26. Did Oklahoma prove its claim against Novartis under the Medicaid Program Integrity Act in connection with Novartis' relationship with BioScrip?

☐ Yes

☐ No

If your answer is "yes," state the amount of damages:

\$ \_\_\_\_\_

**Oklahoma – Common Law Fraud**

27. Did Oklahoma prove its claim against Novartis for Common Law Fraud in connection with Novartis' relationship with BioScrip?

☐ Yes

☐ No

If your answer is "yes," state the amount of damages:

\$ \_\_\_\_\_

**Oklahoma – Civil Conspiracy**

28. Did Oklahoma prove its claim against Novartis for Civil Conspiracy in connection with Novartis' relationship with BioScrip?

☐ Yes

☐ No

If your answer is "yes," state the amount of damages:

\$ \_\_\_\_\_

**Washington – Fraudulent Practices Under RCW 74.09.210(1)(a)**

29. Did Washington prove its claim against Novartis for Fraudulent Practices under RCW 74.09.210(1)(a) in connection with Novartis' relationship with BioScrip?

☐ Yes

☐ No

If your answer is "yes," state the amount of damages:

\$ \_\_\_\_\_

**Washington – Fraudulent Practices Under RCW 74.09.210(1)(b)**

30. Did Washington prove its claim against Novartis for Fraudulent Practices under RCW 74.09.210(1)(b) in connection with Novartis' relationship with BioScrip?

☐ Yes

☐ No

If your answer is "yes," state the amount of damages:

\$ \_\_\_\_\_



**Washington – Fraudulent Practices Under RCW 74.09.210(1)(c)**

31. Did Washington prove its claim against Novartis for Fraudulent Practices under RCW 74.09.210(1)(c) in connection with Novartis’ relationship with BioScrip?

☐ Yes

☐ No

If your answer is “yes,” state the amount of damages:

\$ \_\_\_\_\_

**Washington – Tortious Interference with Business Expectation**

32. Did Washington prove its claim against Novartis for Tortious Interference with Business Expectation in connection with Novartis’ relationship with BioScrip?

☐ Yes

☐ No

If your answer is “yes,” state the amount of damages:

\$ \_\_\_\_\_

**Washington – Civil Conspiracy**

33. Did Washington prove its claim against Novartis for Civil Conspiracy in connection with Novartis' relationship with BioScrip?

☐ Yes

☐ No

If your answer is "yes," state the amount of damages:

\$ \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Foreperson